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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities
Thirteenth session

Summary record of the 174th meeting
Held at the Palais des Nations, Geneva, on Thursday, 26 March 2015, at 3 p.m.

Chairperson: Ms. Cisternas Reyes

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The meeting was called to order at 3 p.m.

Expression of sympathy in connection with the crash of Germanwings flight 4U9525

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

2. **The Chairperson**, on behalf of all the members of the Committee, expressed sympathy to the Government of Germany in connection with the crash of Germanwings flight 4U9525 in the French Alps.

Consideration of reports submitted by States parties under article 35 of the Convention

Initial report of Germany (CRPD/C/DEU/1; CRPD/C/DEU/Q/1 and Add.1)

3. **Ms. Lösekrug-Möller** (Germany) thanked the Chairperson for the expression of sympathy. Introducing her country's initial report (CRPD/C/DEU/1), she said that Germany had first legislated on equal opportunities for persons with disabilities in 1974. In 1994, legal provisions that emphasized inclusion and participation, instead of simply prohibiting discrimination, had been incorporated in the nation's Basic Law. The definition of disability had been further expanded and the transition to a participation-based approach further developed in reforms introduced in the German Social Code in 2001.

4. Those advances had been achieved despite the obstacles that the country had had to overcome with regard to historical perceptions of disability. Many stakeholders and observers nevertheless felt that change was not occurring fast enough. Some also believed that the system of federalism impeded consistency and progress, particularly towards the goal of inclusive education at all levels. However, her Government perceived federalism not as an impediment but as a source of opportunity and incentive. In education, for example, various Länder had amended their legislation to promote inclusion and most aspired to offer a choice between mainstream and special schools.

5. The move towards inclusive education was one of the key areas for action identified in the Federal Government's National Action Plan for the implementation of the Convention. The Plan encompassed more than 200 individual measures and was designed to change attitudes and approaches by mainstreaming disability in all legislative and policy initiatives. The Plan's content had been reviewed by independent experts in 2014 and the resultant report would provide the point of departure for its future development. Persons with disabilities had been involved in the review process from the outset and the government authorities would continue to engage with non-State actors in all areas of society.

6. Other key areas of action under the National Action Plan were work and employment, guardianship and the right to vote. A central aim of the Plan was to bring more persons with disabilities into the general labour market, and the Federal Government was looking to use new technologies and working methods to promote integration and employment sustainability.

7. With regard to guardianship, the aim was to guarantee the right to self-determination by promoting supported, in preference to substitute, decision-making. Under current guardianship law, placing an adult under guardianship was without impact on the legal capacity of the individual concerned, and a person's wishes and preferences were the guide for all action taken on his or her behalf. A study commissioned to assess the efficacy of those provisions in practice would be completed before the end of 2015.

8. To guarantee the right to vote for all citizens, the authorities endeavoured to provide accessible polling stations, assistance and absentee ballots. Persons with disabilities,

including those living in psychiatric hospitals and those under most forms of guardianship, were not denied the right to vote; only persons determined by court order to be unable to make their own decisions were excluded from voting. The Government believed its provisions to be in line with article 29 of the Convention but, following recent debate, had commissioned a study to consider whether the exclusion from voting had been applied too broadly.

9. To further improve the situation of persons with disabilities, the Federal Government was also in the process of drafting a new federal law on participation, which would redefine integration assistance as a participation benefit rather than a welfare benefit. Consultations on the text would be concluded in April 2015 and the new law should be adopted in 2016. The legislative authorities were also working with disability organizations to amend and update the 2002 Act on Equal Opportunities for Persons with Disabilities.

10. **Ms. Bentele** (Germany) said that the national coordination agency responsible for monitoring and supporting implementation of the Convention had identified a number of areas of weakness. It believed that depriving persons under court-ordered plenary guardianship of the right to vote was contrary to article 29 of the Convention and that the prohibition should be repealed prior to the 2017 parliamentary elections. The Government should also take action to ensure effective protection against exploitation, violence and abuse for persons with disabilities, especially women with disabilities, around half of whom were likely to face sexual violence at some point in their lives. Appointing specialized ombudsmen for women and providing empowerment training for girls and women would also help the preventive effort.

11. Its historical focus on separate schooling meant that Germany had considerable ground to make up in the area of inclusive education. The situation was further complicated by the fact that the various Länder were responsible for all general education and university issues and that, as a consequence, there were stark differences from one to another. Shared standards were required to ensure consistency in inclusion policy and resource allocation.

12. Segregation was also a major problem in employment. The coordination agency did not believe that employment in sheltered workshops was the right option for persons with disabilities. Greater awareness of their needs among private sector employers and public authorities was required to enhance opportunities for inclusion in the primary labour market, as well as a reduction in unnecessary red tape. Nonetheless, with its increased emphasis on participation, the Government was moving in the right direction.

13. **Mr. Aichele** (National Monitoring Body for the United Nations Convention on the Rights of Persons with Disabilities, Germany) said that the State party's report lacked depth and did not deal openly with areas of weakness. He hoped that the delegation would compensate for those shortcomings in the course of the dialogue. Specific weaknesses included the persistent segregation in housing, education, work and other areas of life. The State party should focus on the structural changes needed to prevent discrimination and enable persons with disabilities to participate fully in mainstream society. He hoped that the dialogue would provide impetus and encouragement to move the rights of persons with disabilities higher up the political agenda.

14. **Ms. Kingston** (Country Rapporteur) said that, while she welcomed the adoption of the National Action Plan, she remained concerned about the varying levels of implementation of the Convention in the different Länder, the lack of coordination between the Länder and the Federal Government, and the undue fragmentation of laws and policies. Although there had been some legal reforms at the level of the Länder, not all laws were aligned with the Convention and there were no structural guarantees as to the conformity of any new laws that might be passed. Similarly, although most Länder had action plans to implement the Convention, many of those plans did not take a rights-based approach.

15. Further concerns included the segregation of persons with disabilities, the multiple discrimination faced by, for example, migrants and children with disabilities, and the additional marginalization of particular groups, such as persons with autism and persons with psychosocial or intellectual disabilities. Germany had not yet achieved the paradigm shift towards full social inclusion beginning from birth. Almost three quarters of children with disabilities attended segregated schools, those in mainstream schools were taught in separate classes and, in 2012, the majority of secondary school students with disabilities had left without formal qualifications. Over 300,000 persons with disabilities worked in segregated employment or sheltered workshops, where they did not receive the minimum wage, and a lack of incentives meant that few made the transition to the primary labour market. Unemployment was also higher among persons with disabilities, especially women.

16. The high level of institutionalization was another source of concern. Far too little of the budget for disability was spent on providing non-institutional care and the number of persons living in institutions had remained more or less constant for the past decade. Information was needed about efforts at the federal and Länder levels to promote deinstitutionalization and address the practical obstacles to independent living and full participation in the community that persons with disabilities faced.

17. While she welcomed the reforms to German guardianship laws, she believed that more remained to be done in order to fully replace substitute decision-making with supported decision-making, in line with the Committee's general comment No. 1. Within the judicial system, work was also required to guarantee an accessible environment for persons with psychosocial or intellectual disabilities.

18. Lastly, she invited the delegation to comment on reports of obstacles to participation in sport and leisure, and, specifically, reports that wheelchair users were not permitted to participate in the Berlin marathon on equal terms, and also on reports that, despite the existence of federal structures to monitor implementation of the Convention, some Länder had not appointed specific focal points and the relevant administrative units were underfunded.

Articles 1–10

19. **Mr. Tatić** asked whether the draft amendments to the Act on Equal Opportunities for Persons with Disabilities made reasonable accommodation mandatory in the private as well as the public sector and expressly defined denial of such accommodation as a form of discrimination. In that connection, it would be useful to have data about the number of court cases brought for denial of reasonable accommodation or intersectional discrimination against persons with disabilities. He would also like information about the monitoring mechanisms used to ensure compliance with accessibility standards and the penalties imposed on entities — particularly private entities — that failed to respect those standards. Lastly, he would welcome the delegation's comments on Lufthansa's practice of insisting that persons with disabilities should be seated next to a window on its aircraft. Was that policy, which ran counter to article 5 of the Convention, still implemented?

20. **Mr. Kim** Hyung Shik asked whether the Government had encountered any unexpected difficulties in carrying out the vast range of measures envisaged in the National Action Plan for the implementation of the Convention, whether there had been any unintended consequences and what implications, if any, the recent cut of 5 billion euros to the budget of the Federal Ministry of Labour and Social Affairs might have for the Plan's implementation. Noting the large number of migrants living in Germany, he asked whether data about refugees and migrants with disabilities had been compiled, and to what extent such persons had access to rehabilitation and other health-care services.

21. **Ms. Quan-Chang** asked whether the National Action Plan included provisions for harmonizing the various definitions of "disability" in legislation at the federal and Länder levels. She also wished to know what criteria were used to determine what constituted reasonable accommodation.

22. **Mr. Langvad** asked whether the State party had a concrete plan for deciding on a clear legal definition of "reasonable accommodation". He enquired whether studies had been conducted to determine the extent to which persons with disabilities in Germany were able to exercise their right to live independently and be included in society, what progress was being made in that area and how the situation in Germany compared to that in other countries. He asked whether the definition of "disability" included psychosocial disabilities. Did the State party intend to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled and incorporate its provisions in national legislation? What steps was it taking to incorporate the provisions of the Convention on the Rights of Persons with Disabilities in its legislation? Lastly, what types of support did the State party provide to NGOs representing persons with disabilities?

23. **Ms. Pavey** asked what measures the State party was taking, or intended to take, to incorporate a social approach to disability in its anti-discrimination policies, whether there was any jurisprudence relating to the recognition of hate speech targeting people with autism as a crime and whether additional measures to enhance public awareness of autism-related issues were planned, given that there seemed to be little progress in that area.

24. **Mr. You** Liang requested further information on the collection of data on persons with disabilities.

25. **Ms. Peláez Narváez**, referring to the concluding observations of the Committee on the Elimination of Discrimination against Women on the sixth periodic report of Germany to that body (CEDAW/C/DEU/CO/6), in which the State party had been encouraged to mainstream the issues of women with disabilities in its employment policies and programmes, asked how the State party had acted on that recommendation. She requested information on policies to assist migrant women with disabilities and on the impact of female genital mutilation on women and girls with disabilities in Germany and efforts to counter that practice.

26. Regarding the situation of children with disabilities, she asked what steps had been taken to implement the recommendations made in paragraphs 51, 53 and 55 of the concluding observations of the Committee on the Rights of the Child on the combined third and fourth periodic reports of Germany to that body (CRC/C/DEU/CO/3-4). The recommendations had concerned access to inclusive education, protection of girls with disabilities from violence and support for children with disabilities from migrant families.

27. She enquired whether studies had been conducted in Germany on disabilities that intersex children might suffer as a consequence of castration or female genital mutilation.

28. **Mr. Buntan** asked to what extent the State party promoted the use of the universal design approach in mainstream technology development. Applying that principle would ensure that the resulting technology was accessible to all. He also wished to know whether the State party, in subsidizing the development of assistive technologies, was changing its emphasis from cost-effectiveness to respect for individual rights and recognition of reasonable accommodation.

29. He enquired whether the State party was expanding its efforts to eliminate disability-based discrimination, which were currently focused on the spheres of employment and vocational training, to other areas.

30. **Mr. Babu**, referring to an awareness-raising campaign launched by the State party to promote positive perceptions of persons with disabilities, said that he questioned whether it was appropriate to describe disabilities as "curable", as was done in the title of the

campaign. He asked whether the National Action Plan for the implementation of the Convention would be extended once it had run its course.

31. **Mr. Basharu** said that, while the State party was to be commended for recognizing sign language as a separate language, reportedly television broadcasters in Germany sometimes failed to provide sign language interpretation because of the supposedly small proportion of viewers requiring it. What steps might the State party take to remedy the situation?

32. He asked the delegation to comment on the statement in paragraph 35 of the report that anti-discrimination legislation permitted persons with disabilities to be treated differently from those without disabilities if there was an objective reason for doing so, such as avoiding risks.

33. **Ms. Kingston** asked how persons with disabilities living in Germany were enabled to participate in a meaningful and effective way in decision-making that affected them. How did the State party clarify the roles and responsibilities of persons with disabilities with regard to the Convention's implementation?

34. It was regrettable that some government-funded measures to protect women, including those with disabilities, from violence had been discontinued and that, furthermore, the relevant services were in many cases inaccessible to women with disabilities.

35. She asked how the State party was striving to reduce the stigmatization of persons with disabilities, especially intellectual or psychosocial ones, and whether public officials whose duties included assisting persons with disabilities received relevant training.

36. **The Chairperson**, speaking in her personal capacity and referring to the concluding observations of the Committee on the Rights of the Child on the latest periodic reports of Germany to that body, asked whether the recommendation to ensure that children with disabilities and their families had a say in deciding whether the child should attend a special school had been followed up on. She asked why there was no action plan regarding persons with disabilities in Saxony.

The meeting was suspended at 4.25 p.m. and resumed at 4.50 p.m.

37. **Mr. Giese** (Germany), said that the Convention's provisions as a whole had been incorporated in national legislation. His Government was considering how to amend specific laws through explicit references to reasonable accommodation. For example, the Federal Ministry of Labour and Social Affairs was amending the Act on Equal Opportunities for Persons with Disabilities accordingly. His Government was of the view that, generally speaking, reasonable accommodation should be based on the circumstances of individual cases, though of course legislation should have a broader scope.

38. **Mr. Richard** (Germany) said that some Länder had reproduced the definition of "disability" contained in the Convention in their legislation, others used slightly diverging definitions and still others were waiting for the Federal Act on Equal Opportunities for Persons with Disabilities to be updated before deciding on the matter.

39. **Ms. Wurster** (Germany) said that the German Ethics Council had recently issued recommendations for improving the situation of intersex and transsexual persons in Germany and that the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth had held a dialogue on the matter with NGOs. Under new legislation, people did not need to specify their gender for the purposes of administrative procedures; that would, it was hoped, reduce pressure on parents to have sexual reassignment surgery performed on children. An interministerial working group on intersex and transsexual people was examining the recommendations of the Ethics Council in detail and soliciting input on them from organizations representing the persons concerned. National legislation would be amended if necessary.

40. **Ms. Brunozzi** (Germany) said that her Government's efforts to take into account the views of all stakeholders were complicated by the fact that many people with disorders of sex development did not view themselves as having a disability. It was her Government's understanding that doctors in Germany were becoming increasingly reluctant to perform early sexual reassignment procedures, and the guidelines drafted by the working group, which were expected to be adopted in 2015, recommended against early reassignment.

41. **Mr. Morten** (Germany) said that his Government was complying with European Union legislation regarding accessibility. Although compliance by the private sector was harder to secure than public-sector compliance, targets for private firms had been set and some regulations were already in place. For example, starting in 2016, all long-distance buses would have to accommodate wheelchairs. In addition, one could see changes in the private sector in response to market demands. The tourism industry, for example, was increasingly sensitive to the requirements of potential customers with disabilities. The Government could assist industries with compliance; an example was a labelling project sponsored by the Federal Ministry for Economic Affairs and Energy under which hotels and restaurants could indicate that their premises were accessible to people with disabilities. While much remained to be done to achieve full compliance by the private sector with the Convention's accessibility provisions, his Government was working towards that goal.

42. **Mr. Necke** (Germany) said that the National Action Plan for the implementation of the Convention covered a 10-year period. An evaluation of the Plan by experts in 2013 had revealed several noteworthy flaws: the definition of "disability" in the Plan needed to be clearer, indicators and targets needed to be better defined, and greater focus was needed on horizontal aspects and on monitoring and follow-up. The Plan would be refined further in cooperation with civil society and in the light of the Committee's forthcoming recommendations.

43. **Mr. Dusel** (Germany) said that most Länder had action plans relating to people with disabilities. Saxony had not adopted such a plan but was expected to do so by the end of 2015.

44. **Mr. Schmachtenberg** (Germany) said that the overall budget allocation for persons with disabilities had not been cut, as had been suggested; in fact, a sum of 5 billion euros had been set aside from the budget to fund the implementation of the proposed new federal law on participation.

45. Migrant workers and refugees with disabilities had access to the health-care system and to employment-related benefits. However, persons whose status had yet to be determined and who had been in Germany for less than 15 months received only the benefits granted them under the law on benefits for asylum seekers. His Government was implementing Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, under which refugees who were particularly at risk must be given access to additional health services.

46. Data on disability was collected by the Federal Statistical Office and through microcensuses. The Robert Koch Institute performed surveys and collected data on the health-care system, and further information was provided by social security bodies. There were plans to carry out a large-scale survey that would provide more detailed information on persons with disabilities by 2020.

47. **Mr. Giese** (Germany) said that his Government was considering amending the definition of "disability" contained in Book IX of the Social Code to bring it more fully into line with the Convention. With regard to psychosocial disabilities, national legislation did indeed provide a legal basis for their recognition.

48. **Mr. Morten** (Germany) said that it was still unclear whether the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or

Otherwise Print Disabled would be ratified by the European Union or by individual member States. However, national legislation already provided for such access.

49. **Ms. Knospe** (Germany) said that a review had found national legislation to be in line with the Convention, in principle. Moreover, the Federal Constitutional Court had ruled that courts must always bear the Convention in mind when interpreting national statutes. The Federal Government intended to make further legislative amendments in order to improve the implementation of the Convention in practice. Financial measures would be introduced to enable persons with disabilities to participate more fully in society.

50. **Mr. Fischels** (Germany) said that no data was available on cases of discrimination against persons with autism. However, work was carried out to counter such discrimination. Companies were encouraged to employ persons with autism and training programmes had been put in place for such individuals.

51. Organizations of persons with disabilities were independent, formulated their own interests and represented themselves, but that did not preclude the Government, or the Länder and municipalities, from assisting them. Indeed, such organizations received significant financial support. Furthermore, the Act on Equal Opportunities for Persons with Disabilities had been designed, in part, to promote the participation of representative organizations.

52. **Mr. Richard** (Germany) said that representative organizations were involved in the work of advisory councils at the level of the Länder and municipalities, as well as taking part in the drafting of programmes and legislation.

53. **Ms. Wurster** (Germany) said that a survey published in 2012 had shown that women with disabilities, particularly those with multiple disabilities, were especially vulnerable. Work was under way to assess discrimination against hard of hearing women. Shelters and telephone hotlines continued to exist across Germany for women affected by violence. In addition, websites had been created using German sign language and easy-to-read formats, and a 24-hour, multilingual federal hotline on violence against women had been set up in order to better serve women with disabilities. In 2014, there had been a significant increase in the number of persons using the relevant services.

Articles 11–20

54. **Mr. Tatić**, reverting to the issue of the Marrakesh Treaty, asked whether it would be useful for the Committee to address the question of shared competences between the European Union and its member States relating to the ratification of the Treaty when the initial report of that body was considered.

55. He would appreciate information on the training provided for members of the judiciary with regard to disability-based discrimination, the Convention and the rights of persons with disabilities.

56. **Mr. Langvad** asked what steps had been taken to incorporate the absolute prohibition on forced or non-consensual psychiatric interventions in domestic legislation and what the State party was doing to recognize the harm caused by forced treatment. Had a compensation mechanism been established and, if so, had there been any cases of compensation being awarded for harm caused by forced or non-consensual treatment?

57. He asked whether persons with disabilities could choose where they wished to live and receive the assistance they needed at that location, or whether they had to live in special institutions or accommodation in order to benefit from support. Lastly, he enquired whether assistance for persons with disabilities was provided free of charge.

58. **Ms. Quan-Chang** said that, in its report, the State party asserted that persons with disabilities enjoyed full legal capacity. However, the fact that there was a law on guardianship on the statute books, under which a third person could be designated as a

representative, contradicted that claim. There had been cases where the wishes of persons with disabilities relating to such issues as their choice of representative or the provision of medical treatment had been ignored. The State party should consider replacing the current guardianship regime with a system of supported decision-making.

59. The high number of cases in which the courts had placed persons with disabilities in institutions without their consent was a cause for concern. The State party should explain what steps it was taking to halt the practice of court-ordered institutionalization.

60. Certain types of psychiatric treatment, including chemical and electroconvulsive therapies, considered by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to constitute torture continued to be imposed on persons with disabilities. She asked what the State party was doing to prevent the use of such treatments and whether a monitoring mechanism had been set up for that purpose.

61. Lastly, she enquired whether the State party intended to set up an independent authority to monitor facilities and programmes for persons with disabilities in order to prevent the occurrence of exploitation, violence and abuse, as called for in article 16, paragraph 3, of the Convention.

62. **Mr. Buntan** asked whether the State party had disaster risk reduction plans at both the federal and Länder levels that were comprehensive and inclusive of and accessible to persons with disabilities, and whether persons with disabilities, particularly hard of hearing persons, had equal access to the emergency call system.

63. **Ms. Peláez Narváez** said that the delegation had yet to respond to her previous questions. She asked how the State party took into account the best interests of children with disabilities and how it ensured that they could voice their opinions on issues directly affecting them. She enquired what steps had been taken to ensure that girls with disabilities who were victims of physical, psychological or sexual abuse had access to justice and enjoyed protection, and to what extent disability was reflected in data on the trafficking of women for purposes of sexual exploitation or labour.

64. She wished to know what measures the State party had taken to end female genital mutilation affecting women with disabilities, including forced sterilization, which, national legislation notwithstanding, continued to be performed on those with intellectual and psychosocial disabilities and deaf-blind women and girls. The State party should also explain when and how it was going to halt forced abortions on women with disabilities, particularly members of the categories just listed.

65. She asked how the State party ensured that migrants with disabilities and children with disabilities born of migrant mothers enjoyed the same access to services as German citizens with disabilities.

66. **Ms. Kingston** said that her previous questions on awareness-raising relating to persons with intellectual and psychosocial disabilities and training for public officials involved in the promotion and protection of the rights of persons with disabilities had not yet been answered.

67. The situation in the State party relating to guardianship and substitute decision-making was unclear. In that connection, it would be helpful to know whether the State party was providing training on the Committee's general comment No. 1 for public officials, judges, social workers, health personnel and other actors.

68. She was concerned about the physical and communication accessibility of courts and other bodies involved in administering the law. Further details on legal assistance for persons with disabilities, legal aid and low threshold advice services would be welcome, as would information on complaint facilities. She also wished to know whether there were requirements to enforce the standards of the Convention within the legal system and in court rulings.

69. She asked whether judicial and prison officials had received training on the application of human rights standards and whether legal practitioners had benefited from training on the Convention.

70. The widespread practice of involuntary placement of persons with psychosocial disabilities in institutions gave cause for concern. The State party should provide data in that regard, along with information on the financial resources provided for community-based outpatient services for persons with intellectual or psychosocial disabilities.

71. She wished to highlight the issue of human rights violations in psychiatric institutions and older persons' care settings involving the use of physical restraints. Lastly, she wondered whether the State party intended to introduce legal reforms to strengthen social assistance services in order to enable persons with disabilities to live in the community if they so chose, and to be included, without facing additional financial barriers.

72. **Mr. Kim** Hyung Shik said that, looking at paragraph 148 of the State party report, it seemed that there was some confusion over the concepts of "integration" and "inclusion".

73. **The Chairperson**, speaking in her personal capacity, said that she would appreciate clarification on the issue of "reservation of consent" (*Einwillingungs-vorbehalt*), whereby persons who nominally had full legal capacity were only able to exercise that capacity with the consent of a custodian. Additional information on how legal proceedings were adapted to take into account various forms of disability would also be welcome.

74. She asked whether persons with real or apparent disabilities who had been deemed to constitute a danger to themselves or to others could be placed in detention and whether guarantees of due process were applied to persons with disabilities, in particular psychosocial or intellectual disabilities, alleged to be involved in criminal offences. Lastly, she asked whether detention facilities in the State party were equipped to hold persons with disabilities, whether reasonable accommodation was made for such detainees and whether rehabilitation services were available to them.

The meeting rose at 6.10 p.m.

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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities
Thirteenth session

Summary record of the 175th meeting
Held at the Palais Wilson, Geneva, on Friday, 27 March 2015, at 10 a.m.

Chairperson: Mr. Cisternas Reyes

Contents

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 35 of the Convention (*continued*)

Initial report of Germany (continued) (CRPD/C/DEU/1; CRPD/C/DEU/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

Articles 11–20

2. **Ms. Wurster** (Germany), replying to questions posed at the previous meeting, described the implementation of the recommendations concerning children with disabilities made in the concluding observations of the Committee on the Rights of the Child on the combined third and fourth periodic reports of Germany to that body (CRC/C/DEU/CO/3-4). She said, with regard to the recommendation contained in paragraph 51 of the concluding observations, that German law required government youth services to involve children and young people in all decisions affecting them. Since January 2014, numerous activities had been undertaken in order to further enhance children's participation in decision-making, and an evaluation of the situation would be submitted to the German Bundestag at the end of 2015. With regard to the recommendation contained in paragraph 53, a comprehensive strategy to protect young people from sexual abuse had been developed, and the Government had allocated 4 million euros to a nationwide pilot project to protect young people with disabilities in institutions from such abuse. Regarding the recommendation contained in paragraph 55, children of migrants had the same rights as all other children in Germany, and families with children with disabilities who had a migration background also had access to benefits and support.

3. **Mr. Pfaff** (Germany), referring to the recommendation contained in paragraph 51 (c) of the concluding observations, said that the education authorities in Germany always approached parents first about decisions on whether to enrol children in special education, on account of the rights enjoyed by parents as custodians of their children and because German family law stipulated that parents should discuss with their children all decisions affecting them; that was true for children with and without disabilities. Where the parents of a child with a learning disability or behavioural disorder were opposed to the placement of their child in a special school, perhaps for fear of the child's being stigmatized, they could challenge the school authorities' decision in that regard before the courts. However, there were very few such cases, and they accounted for a very small percentage of the total number of students affected.

4. **Ms. Brunozzi** (Germany) said that section 179 of the Criminal Code, which dealt with the sexual abuse of persons incapable of resistance because of a mental illness or disability, did not discriminate against persons with disabilities but prescribed a heavier penalty for offenders in such cases based on the fact that they had exploited the victim's vulnerability. An initiative had been recently launched to amend section 179 in order to provide for the rehabilitation of persons affected by such abuse.

5. The General Anti-Discrimination Act had been adopted for the purpose of incorporating in national legislation the four European Union anti-discrimination directives (2000/43, 2000/78, 2002/73 and 2004/113). The Act did not specify what constituted reasonable accommodation for persons with disabilities, which gave rise to legal uncertainty. Indeed, what was appropriate and reasonable could be defined only on a case-by-case basis. Although, under the Act, it was possible for persons with disabilities to

receive differentiated treatment, such treatment did not constitute discrimination because it was authorized only on the grounds enumerated in the law.

6. **Mr. Kügele** (Germany) said that his Government had taken measures to systematically reduce barriers to access to health care for persons with disabilities and tailor health-care and long-term care provision to their needs. For example, all health-care providers were required to take into account the particular situation of persons with disabilities in all interactions with them. A series of planned legislative amendments would provide for the establishment of special medical treatment centres for persons with intellectual disabilities and severe multiple disabilities, and a federal initiative had been launched to develop a web-based tool intended to help doctors ensure the accessibility of their medical practices.

7. **Mr. Morten** (Germany) said that a European Union directive, which had been incorporated in German law, provided that persons with disabilities were entitled to ground support at airports and more flexible seating assignments in aircraft. It also provided for a complaint mechanism in the event they felt that they had been subjected to discrimination.

8. The principle of universal design, whereby products and environments were planned and designed to be accessible to everyone, without individual adaptation or special design, played an important role in both the public and private sectors, and his Government maintained a regular dialogue with private-sector actors in order to promote it. Both the federal Act on Equal Opportunities for Persons with Disabilities and the acts on equal opportunities adopted by the Länder focused on accessibility by means of universal design. Germany was one of the pioneers in universal design, which it believed must be undertaken in cooperation with end users. His Government had invested heavily in making train stations and urban infrastructure accessible to persons with disabilities, and those efforts would continue in full force in 2015.

9. **Ms. Knospe** (Germany) said that the campaign entitled "Handicapping is Curable", which had been conducted by the Federal Ministry of Labour and Social Affairs, had been intended to change attitudes about disability. The term "handicapping" referred to the ways in which the environment failed to take people's disabilities into account, and it was that failure that could be cured by removing the obstacles in the way of persons with disabilities, not the disabilities themselves.

10. **Mr. Fischels** (Germany) said that, as a result of the actions of organizations of persons with disabilities, much progress had been made in terms of improving the accessibility for persons with disabilities of both public and private television and radio programmes in Germany. Currently, some 93 per cent of all television programmes were captioned; in 2012, that figure had stood at only 49 per cent. Since January 2013, public television stations had also expanded their audio description systems.

11. **Mr. Richard** (Germany) said that sign-language interpreters were used routinely for evening news broadcasts and similar public information programming. However, improvements in accessibility were still needed with regard to private television stations, and the Länder were encouraging efforts in that regard. There were at least eight universities in Germany that offered sign language interpreting as part of their courses, thus providing a good supply of trained interpreters to the job market.

12. **Mr. Schmachtenberg** (Germany), responding to a question posed by Ms. Quan-Chang concerning the alleged use in Germany of certain types of forced psychiatric treatment that were tantamount to torture, said, if the implication was that State-induced torture was practised in the country, then that implication was false. Institutions for persons with disabilities were monitored by the National Agency for the Prevention of Torture, which had been set up in 2008. The agency also monitored prisons, police stations, psychiatric hospitals and retirement and children's homes. That measures taken to protect

persons from harming themselves or others in such institutions could be perceived as torture was inescapable and highlighted the importance of monitoring and of reducing the use of restraints.

13. **Mr. Lütter** (Germany) said that guardianship in Germany was a system of supported decision-making the core element of which was the right to self-determination. A person could not be placed under guardianship against his or her will, and guardianship was ordered only if the person concerned had no authorized representative to act on his or her behalf. Recourse to guardianship did not influence the determination of a person's legal capacity, nor was it synonymous with legal incapacity; rather it gave rise to a relationship in which the person under guardianship was supported in taking decisions, transmitting those decisions to the judicial system and ensuring their implementation. The actions of guardians were always guided by the wishes and well-being of the individual under guardianship; guardians could not give precedence to their own wishes. Substitute decision-making was possible in very specific situations and under very restrictive conditions.

14. The institutionalization of persons in Germany was in conformity with the requirements of article 14 of the Convention, and a person could not be deprived of his or her liberty solely on the basis of having a disability. Persons compulsorily admitted to hospital had access to legal remedies in order to challenge the legality of their admission. Compulsory admission to a hospital or forensic clinic was authorized only if the person concerned was unable to act on his or her own behalf and required treatment in order to avert a major health threat that could be cured only by that treatment or represented a suicide or self-harm risk.

15. A patient health-care directive had been introduced in 2009 as a means of reducing forced admissions. It was a legal document that allowed individuals to decide, in advance, which medical treatments or surgical interventions they would agree to receive in the event that they became incapacitated or could no longer speak for themselves. A legal guardian could not override the health-care directive of a person under guardianship. Where no health-care directive had been prepared, compulsory medical treatment could be carried out only under specific conditions, which included the following: the individual under guardianship had to be unable to see the need for the treatment; an attempt had to be made to convince him or her to submit to the treatment; the treatment had to be essential to the person's well-being and the benefit proportionate to the risk involved; and the treatment had to be ordered by a court.

16. The Federal Government acknowledged that it was necessary to improve the system of supported decision-making. Although university courses in guardianship law were offered, they were not a prerequisite for acting as guardian, and it was the courts that decided whether prospective guardians were suited to the duties expected of them. In the course of 2015, the Federal Ministry of Justice and Consumer Protection would commission a study to determine whether, in practice, the German guardianship regime was consistent with the provisions of the Convention and what steps could be taken to improve the competence of guardians. After being brought into line with the new guidance, the guardianship manual would indicate that guardianship was not the same as legal representation and that guardians were required to comply with the provisions of the Convention.

17. The "reservation of consent" (*Einwilligungsvorbehalt*) was a measure that could be ordered by a court. It had been instituted on the basis of article 4 of the Convention and its purpose was to avoid abuse in connection with the exercise of the right to consent by persons with disabilities who had been placed under guardianship. It could be applied only in order to avert a substantial risk to the individual concerned, or to his or her property, and was consistent with the State's obligation to protect citizens from exploitation and harm and to protect their rights to self-determination and decision-making. Guardians could afford

protection only from unintentional decisions. A precondition for the exercise of the "reservation of consent" was that the person under guardianship had to be incapable of understanding that his or her assets were at risk or that he or she would suffer some other form of harm.

18. The criteria for imposing the use of restraints were the same as those for compulsory institutionalization or admission to hospital. A new system, designed to reduce or abolish the use of restraints without negative results for patients, was being applied, and alternative measures were being suggested in order to obviate the need for court-ordered restraint. In 2010, some 100,000 orders for the use of restraints had been issued, while in 2013, that figure had dropped to 75,000, representing a 25-per-cent decrease. Although the Government had not yet achieved its ultimate objective, the trend was definitely heading in the right direction.

19. **Mr. Dusel** (Germany) said that, in accordance with article 16, paragraph 3, of the Convention, independent authorities at the level of the Länder provided quality assurance and advice to facilities designed to serve persons with disabilities in order to prevent the occurrence of exploitation, violence or abuse. In the event that a resident filed a complaint, the home supervisory body visited the facility in question, provided advice and investigated the complaint. The approach had proved to be very effective.

20. **Ms. Wurster** (Germany) said that Germany respected the right of all women, whether or not they had a disability, to have a family. A project to train counsellors in giving advice to pregnant women with learning disabilities had been developed, and websites had been adapted in order to display the relevant information in an easy-to-read format.

21. **Ms. Brunozzi** (Germany) said that persons with speech or hearing impairments could use sign language interpreters or other technical aids in order to gain access to the judicial system. In 2013, persons who were blind or had visual impairments had been granted the right to receive and submit all relevant court documents in an accessible format. In 2018, the Judicial System Act would be amended to provide for secure and accessible communication with courts for persons with disabilities. Persons with disabilities who had committed or were accused of a crime had the same rights as other persons; there were no provisions or mechanisms in place that denied persons with disabilities — on the basis of their disability — the right to a fair trial.

22. **Ms. Knospe** (Germany) said, with regard to the criticism that Germany spent more money on inpatient care than on outpatient care for persons with disabilities, that that trend had been reversed and that, since 2005, expenditure for outpatient care had increased significantly.

23. **Mr. Schmachtenberg** (Germany) said that benefits for persons with disabilities were provided through the German social security system by the health insurance fund, the long-term care insurance fund, the occupational accident insurance fund or the unemployment insurance fund, depending on the particular case in question. The current Government had plans to transfer certain benefits for persons with disabilities away from the system of social assistance and was considering how the income of the persons concerned should be taken into account when calculating benefit payments in the future.

24. **Mr. Morten** (Germany) said, with regard to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled, that there was some controversy within the European Union as to whether the ratification of the instrument fell within the exclusive competence of the European Union or whether it was a treaty of shared competence with the European Union member States. He could not offer any further information, since discussions on the matter were still under way.

25. Turning to the issue of access to the emergency call system, he said that persons with hearing impairments could contact the emergency services by fax. The disadvantage, of course, was that one had to have a fax machine at hand. Although it was not currently possible to contact emergency dispatch centres by text message, efforts were being made to address that situation. In the event of an attack on the country or a natural or man-made disaster, a nationwide system would ensure that a warning was transmitted to the country's public broadcasters, to which persons with disabilities could connect with a variety of means, including vibration devices. Lastly, drills involving emergency response personnel took into account the needs of persons with disabilities.

26. **Mr. Giese** (Germany) said that a good deal was done to raise awareness of human rights among judges, in particular the rights of persons with disabilities. In early March 2015, for instance, the Federal Ministry of Labour and Social Affairs had co-hosted an event on what the courts could do to make human rights real. The Convention on the Rights of Persons with Disabilities had been used as an example. Other awareness-raising activities included those of the German Academy of Judges, which had long organized events on international human rights instruments, including the Convention. The Academy of European Law in Trier, which provided training to legal practitioners, offered periodic seminars on the Convention, as did the Länder.

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27. **Mr. Lovászy** asked whether Germany, in view of the demographic trends in the country, offered would-be parents, including single women and women with disabilities, opportunities or even incentives to adopt disabled children in particular. He enquired what accounted for the high rates at which disabled children dropped out of school and whether there was a detailed road map, including specific quantitative goals, for increasing the number of disabled children in mainstream schools. Information on the use of German sign language and other forms of accessible communication for students pursuing graduate degrees would be welcome. Since private employers were apparently obliged to provide reasonable accommodation only for employees who were already on board, he wondered what procedure was followed when a qualified person with a disability applied for a job at a workplace where such provision had not previously been made. Lastly, he wished to know whether the Federal Constitutional Court had handed down any decisions regarding the primacy of international conventions and, if so, what effects those decisions had had in the Länder.

28. **Mr. Tatić** asked how many qualified sign-language interpreters there were in Germany and what measures were being taken to ensure that fears of stigmatization did not prevent the parents of children with disabilities from availing themselves of the educational support services to which their children were entitled.

29. **Mr. Kim** Hyung Shik said that he was unsure whether teachers in the State party fully understood what inclusive education entailed and that he therefore wondered what kind of training they were given. He asked whether inclusive education was supported by parents and, perhaps more importantly, by the teachers of the more than 300,000 students in the country's special schools. Given that special education teachers had been the major obstacle to introducing inclusive education in his own country, he wished to know how the German authorities intended to deal with any resistance from that particular quarter.

30. Regarding employment, table 2 in the State party's report, describing schemes to integrate persons with disabilities into the labour market, was very useful, but it would have been more useful still if information on such topics as turnover, wages in sheltered workshops relative to wages in the open labour market and job satisfaction had been provided. In that connection, he asked what plans the authorities had to phase out their

reliance on sheltered workshops, in which more than a quarter of a million persons with disabilities were currently employed.

31. The Government's commitment to providing overseas aid was commendable. He wished to know, however, what initiatives it had taken to strengthen disabled people's organizations through its international cooperation efforts and, especially, to enable persons with disabilities to play a critical role in promoting disability-inclusive development; too often, foreign funds were simply dropped into developing countries. Lastly, he asked what percentage of the budget had been earmarked for humanitarian aid in the past five years.

32. **Ms. Quan-Chang** said that using restraints on persons with disabilities, a fairly common practice in the State party's psychiatric and other institutions, was indeed akin to torture. She asked whether persons with disabilities were really able to give free and informed consent to medical procedures, in particular those affecting their fertility, and how the State party ensured that such persons had access to health care, particularly reproductive health care. The delegation's comments on the effects of guardianship on the enjoyment by persons with disabilities of their political rights would be of interest, as would details of the State party's plans to make the inclusion of persons with disabilities an integral part of its sustainable development goals.

33. **Ms. Peláez Narváez** asked how the State party ensured the privacy of persons with disabilities in institutions and how it ensured that persons with disabilities who married and formed families could keep their children. She enquired how the Government was making certain that forced sterilization of women and girls with disabilities was no longer practised. In that connection, she would appreciate a response to her question on measures taken to put an end to all forms of female genital mutilation.

34. In view of their alarmingly low workforce participation rates, she wished to know what the State party was doing to promote the employment of women with disabilities. Information on any programmes or strategies to combat the social and economic exclusion of women with disabilities, in particular migrant women, would be welcome.

35. **Mr. Buntan** asked whether the German authorities subscribed to the notion that disaster risk reduction should be an integral part of the sustainable development goals to be adopted in New York in September 2015 and, if so, how they would ensure that the relevant measures were inclusive of persons with disabilities. He also wished to know what efforts the State party would make to ensure that persons with disabilities were taken into consideration in all aspects of the country's international development assistance, in particular those relating to disaster risk reduction.

36. He wondered whether the large number of students still in special education in Germany had anything to do with a failure to make the mainstream education system sufficiently inclusive. It would be useful to have additional information on the status of Braille and sign language, including tactile sign language. Regarding work and employment, he asked whether the Government had taken any steps to help persons with disabilities move more successfully from sheltered workshops to the open labour market and whether it was aware that in some fields — the law, for instance — increasing reliance on information technologies could further widen the gap between persons with disabilities and others. Lastly, he enquired about the ways persons with disabilities were helped to vote and asked whether they were also given help when they decided to run for public office.

37. **Mr. Langvad** asked why, given the great importance of being included in the democratic process, any person could be deprived of the right to vote in Germany. He also wished to know what measures were being taken to lower the cost of services used by persons with disabilities, ensure that inclusive education was a right and provide persons in institutions with access to health care on an equal basis with others. Any information on the

number of cases of harm done to persons with disabilities who were treated without their free and informed consent would be appreciated.

38. **Mr. Parra Dussan** asked what was being done to ensure that the many new occupations created as a result of the State party's technological prowess were accessible to persons with disabilities. He requested additional information on the employment of persons with disabilities in the public sector and any initiatives to encourage their acquisition of work experience in the open labour market. Lastly, he asked how the State party ensured that persons with disabilities enjoyed the right not only to vote but also to stand for office.

39. **Mr. Ruskus** said that, in view of the State party's apparent emphasis on special education, he would appreciate information on any comprehensive national strategy to transform special schools or programmes into inclusive environments. Along the same lines, he wished to know whether there was a strategy to strengthen the education system's ability to meet a diversity of educational needs and what measures had been taken to support persons with disabilities as they moved from special schools to mainstream schools and from vocational training to employment. He enquired to what extent university curricula covered disability issues.

40. **Mr. Al-Tarawneh** said that he was familiar with the development aid offered by the State party's technical cooperation enterprise and wondered whether it could not stress the inclusion of disability issues more effectively. In his country, Jordan, aid that targeted the many Syrian refugees with disabilities would be most welcome, for instance, especially as it seemed that such refugees found their applications for asylum rejected at disproportionately high rates.

41. **Mr. Pyaneandee** asked whether the German authorities conceded that uniform implementation of the Convention at the federal and Länder levels had not succeeded and, if so, whether they believed that the legal system as a whole should evolve in order to ensure a greater degree of consistency and predictability and to give persons with disabilities greater scope to challenge discrimination. He wondered whether the delegation agreed that the State party's failure to implement article 33, paragraph 2, of the Convention was the source of a number of other discriminatory practices and the reason for the State party's inability to provide data on the number of complaints regarding discrimination. In view of the problems posed by its federal structure, was it not high time for Germany to work with other States that shared its heritage in order to achieve common solutions?

42. **Mr. You** Liang asked what measures the State party was taking to help persons with disabilities join the workforce, so that they might not only share in the fruits of economic and social development but also contribute to it. He enquired whether Germany had plans to cooperate with developing countries in the implementation of the Convention. More specifically, since many German companies had developed high-quality assistive devices, he wondered whether there were any plans to help developing countries manufacture better ones.

43. **Mr. Basharu** asked whether the State party intended to continue disability mainstreaming in international cooperation despite the global economic crisis and whether it supported the inclusion of additional references to persons with disabilities in the post-2015 development agenda, particularly in relation to the sustainable development goals on poverty and health. He also wished to know what reasonable accommodation measures were available for deaf and hard of hearing persons and pregnant women with disabilities in hospitals.

44. **Ms. Kingston** said that she questioned how special schools could be considered compatible with the concept of inclusion. She asked whether there was a national network of outpatient psychiatric care facilities and whether rights-based training was provided to

medical professionals, particularly in regard to communication and respect for the principle of free and informed consent. Regarding employment, further information on the functioning and financing of sheltered workshops, the measures taken to support persons with disabilities making the transition to the open labour market and the efforts made to collect data at a national level on the accessibility of workplaces would be appreciated. Lastly, she wished to know whether the Government planned to design human rights indicators to monitor the implementation of the Convention, whether it would provide financial support for the work of the independent monitoring mechanism on an ongoing and permanent basis, and whether it intended to grant legal status and provide adequate resources to the Länder commissioners for matters relating to persons with disabilities.

The meeting was suspended at 12.05 p.m. and resumed at 12.20 p.m.

45. **Mr. Schmachtenberg** (Germany) said he strongly refuted the claim that torture was practised in Germany. His Government did not share the view of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that the use of restraints or of chemical or electroconvulsive therapy constituted torture. He wished to confirm that female genital mutilation was indeed an offence and was punishable under the Criminal Code.

46. **Mr. Asmussen** (Germany) said that the Government remained committed to building an inclusive education system and had allocated some 500 million euros to inclusive education initiatives. All teachers received training on the importance of inclusive education and were responsible for ensuring the inclusion of children with disabilities in mainstream schools wherever possible. However, the school system was complex and diverse and would require long-term reform before it could accommodate all children with disabilities. Children attending special schools were taught by specially trained teachers and received a high level of instruction tailored to their needs. The number of children with intellectual disabilities obtaining special school-leaving certificates was not yet reflected in national data, but efforts were under way to rectify that situation. Persons with disabilities had equal access to university education and could request sign language interpretation and textbooks in alternative formats.

47. **Mr. Fischels** (Germany) said that, while the unemployment rate among persons with disabilities was higher than that for persons without disabilities, the overall participation of persons with disabilities in the open labour market had steadily increased over the past few years. The Government had allocated 2.2 billion euros to improve employment opportunities for persons with disabilities, including through wage subsidy and employment rehabilitation initiatives. It had also established a quota of 5 per cent for the employment of persons with disabilities in the civil service, which many federal departments and ministries exceeded.

48. **Mr. Köhne** (Germany) said that the total number of persons with disabilities working in sheltered workshops had increased owing to the fact that those persons were living and working for longer. Given the difficulties experienced by some persons with disabilities in making the transition from sheltered employment, steps had been taken to ensure that sheltered workshops modelled their working conditions more closely on those that prevailed in the open labour market. Sheltered workshops were obliged to provide assistance and support to persons with disabilities who expressed the desire to work in the open labour market, and national incentives had been introduced to encourage private sector employers to hire persons with disabilities for mainstream labour market positions. Persons with disabilities working in sheltered workshops received a monthly wage of 200 euros, which could be supplemented by income support benefits. They also enjoyed specific pension privileges.

49. **Mr. Boehl** (Germany) said that every person had the right to vote, including persons with disabilities. The only exception to that rule was in the case of persons declared legally incapable by the federal courts. Special provisions had been introduced to ensure that persons with disabilities could access polling stations and ballot papers were provided in alternative formats. Persons with disabilities could also stand for election on the same basis as persons without disabilities.

50. **Mr. Kügele** (Germany) said that persons with disabilities had equal access to health services, including persons living in institutions and persons with restricted mobility. Deaf or hard of hearing persons seeking medical treatment also had the right to assistance from a sign language interpreter funded through the statutory health insurance scheme.

51. **Mr. Albrecht** (Germany) said that inpatient, outpatient and mobile psychiatric services were available for all persons, including persons with disabilities.

52. **Ms. Lösekrug-Möller** (Germany) thanked the Committee members for their comments and recommendations and reiterated her country's commitment to implementing the Convention.

53. **Mr. Aichele** (National Monitoring Body for the United Nations Convention on the Rights of Persons with Disabilities, Germany) said that, while considerable progress had been made towards upholding the rights of persons with disabilities in Germany, more work remained to be done, notably to secure the rights of those persons to exercise legal capacity and to vote, their right to live and work in the community, and their rights to inclusive education and personal inviolability.

54. **Ms. Kingston** (Country Rapporteur) said that the State party was to be congratulated on its efforts to build a fully inclusive society. She wished to encourage it to address the remaining concerns highlighted by the Committee.

The meeting rose at 1.05 p.m.